IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4424 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL BHIMJIBHAI DUDABHAI - Petitioner(s)

Versus

DEPUTY COLLECTOR & 1 - Respondent(s)

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Appearance :

MR MEHUL S SHAH for Petitioner(s) : 1,MR SURESH M SHAH for Petitioner(s) : 1,
MR DIPEN DESAI AGP for Respondent(s) : 1,
RULE UNSERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/09/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has

challenged the legality and validity of the judgment and order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat dated 15.4.1988 passed in Revision Application No. SRD 13/87 in dismissing the same and confirming the order passed by the Assistant Collector, dated 20.10.87 passed in Fragmentation Case No. 85/87.

2. The land bearing S.No.5 admeasuring 26 Gunthas situated at village Shakhpur, Taluka Lathi, District Amreli was owned by one Suragbhai Bhimbhai respondent No.2 herein. Some portion of the land came to be sold by him to the petitioner by registered sale deed dated 6.5.74 i.e. 24.10.74. The proceedings came to be initiated by the Assistant Collector, Amreli for declaring the sale transaction/transfer in favour of the petitioner as invalid and in breach of provisions of Bombay Prevention of Fragmentation Act and the Assistant Collector, Amreli by its order dated 27.10.87 passed in Fragmentation Case No.85/87 declared the sale-transaction between the petitioner and respondent No.2 dated 6.5.74 as illegal and imposed penalty of Rs.250/- under Section 9(2) of the

Act and further passed order to restore the position which was prevailing prior to the execution of the said sale-deed within a period of 2 months. Being aggrieved and dissatisfied with the order passed by the Assistant Collector, Amreli dated 27.10.87, the petitioner preferred Revision Application being Revision Application No. SRD 13/87 before the Additional Secretary (Appeals), Revenue Department, State of Gujarat and the Additional Secretary (Appeals), Revenue Department, State of Gujarat by its judgment and order dated 15.4.88 dismissed the said revision application confirming the order passed by the Assistant Collector, Amreli dated 27.10.87. Being aggrieved and dissatisfied with the judgment and order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat dated 15.4.1988 passed in Revision Application No.SRD 13/87 the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Shri Mehul S. Shah, learned advocate appearing on behalf of the petitioner has vehemently submitted

that the sale transaction had taken place on 6.5.74 and the proceedings came to be initiated by the Assistant Collector, Amreli under the provisions of the Bombay Prevention of Fragmentation Act in the year 1984 i.e. After the period of 10 years i.e. After unreasonable period which was not permissible. He has submitted that the Secretary (Appeals) ought not to have confirmed the order passed by the Assistant Collector, Amreli which was initiated after the period of 10 years of sale transaction. He has relied upon the decision of the Division Bench of this Court reported in VALJIBHAI JAGIVANBHAI VS. STATE OF GUJARAT AND OTHERS, 2005 (1) GLH P.34 in support of his above submission. On merits also, he has submitte3d that in fact transaction was not hit by the provisions of the Bombay Prevention of Fragmentation Act and there it is requested to allow the present Special Civil Application.

4. Shri Dipen Desai, learned AGP has though tried to support the judgment and order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat as well as the Assistant Collector,

Amreli however, he is no in a position to dispute that the proceedings came to be initiated by the Assistant Collector, Amreli for breach of the provisions of the Bombay Prevention of Fragmentation Act after the period of 10 years.

5. It is not in dispute that the sale transaction has taken place on 6.5.74 and even the entry was set aside in 1979, still the proceedings for the breach of provisions of Bombay Prevention of Fragmentation Act came to be initiated by the Assistant Collector, Amreli for the first time in the year 1984 i.e. As such after a period of 10 years of sale transaction. The Division Bench of this Court in case of VALJIBHAI JAGIVANBHAI (Supra) relying upon the judgment of the Hon'ble Supreme Court has held that the proceedings are required to be initiated by the Competent Authority within reasonable period and to initiate the proceedings after unreasonable period is not permissible. In the present case exercise of powers after period of 10 years cannot be said to have exercised the powers within reasonable period. Under the circumstances, on that ground alone i.e on the

ground that the powers are exercised after unreasonable period order passed by both the authorities below are required to be quash and set aside.

6. For the reasons stated above, the petition succeeds. The judgment and order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat dated 15.4.1988 passed in Revision Application No.13/87 and order passed by the Assistant Collector, Amreli dated 27.10.87 passed in Fragmentation Cas3e No.85/87 are hereby quashed and set aside.

7. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R.SHAH, J.)

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